IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7930 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKLAL BHIKHALAL BHAGDIA

Versus

THE PRESIDENT

Appearance:

1. Special Civil Application No. 7930 of 1995

MR CB DASTOOR for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,2

MRS. SANGEETA PAHWA for M/S THAKKAR ASSOC. for Respondents

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

#. The challenge in this petition under Article 226 of the Constitution of India with a prayer is to quash and

set aside the impugned action of the respondent in permitting the employees, who are junior to the petitioner, on the ground that the order is unjust, illegal and arbitrary and in violation of principles of natural justice and also violative of Articles 14 and 16 of the Constitution of India. According to the petitioner, the petitioner was discharging his duties since his appointment as Octroi Clerk and though the petitioner had rendered about 26 years of service, he was not considered for a vacant post of Octroi Inspector and another junior person is appointed to the post of Octroi Inspector. Therefore, according to the petitioner, in view of his long service and he being one of the seniors among most of the employees in the respondent-Nagarpalika, he should have been considered by the respondent-authority.

#. This matter was admitted by this Court and it was directed that if any promotion will be made, the same will be subject to the result of this petition.

#. Today, when the matter is called out for final hearing, by affidavit-in-reply filed by the the Chief Officer of the Botad Nagarpalika, claim of the petitioner is opposed, inter alia, stating therein that the petitioner is not holding requisite qualification for the post of Octroi Inspector, namely, graduation and 5 years of experience as a Clerk, whereas the petitioner's academic qualification is only up to 5th standard. Not only that, but the respondent-Nagarpalika has not given any regular appointment by way of promotion to the post of Octroi Inspector and no decision to give promotion on the said post is taken by the respondent-authority. The person, who was given charge of the post of Octroi Inspector, was also not based on regular order of promotion.

#. According to Mrs. Sangeeta Pahwa, the learned advocate appearing for the respondents, the petition filed by the petitioner is devoid of merits, and, therefore, it is premature.

#. She submitted that even otherwise also, the petitioner does not fulfill the requisite qualification for being considered for the promotional post of Octroi Inspector i.e. the minimum qualification being graduate with 5 years' experience as a Clerk. She further submitted that in view of the policy decision taken by the State of Gujarat to abolish octroi, even on administrative ground also, the respondent-Nagarpalika

may not be required to appoint any person or give promotion on the said post as on date.

#. Having heard the learned counsel for the parties and the evidence produced on the record of the petition, no case is made out for considering the petitioner for promotion to the post of Octroi Inspector in view of the fact that the petitioner never possessed requisite qualification for being considered for the said post. Even otherwise also, as per the affidavit-in-reply filed by the respondent-Nagarpalika that one Shri Batukbhai Maniyar is given charge only temporarily on the said post of Octroi Inspector and no final decision is taken by the respondent-Nagarpalika, as stated in the affidavit-in-reply. Therefore, no case is made out by the petitioner and no interference is called for in extraordinary powers of this Court under Article 226 of the Constitution of India. Rule is discharged. No order as to costs.

[ANANT S. DAVE, J.]
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